
HOUSE BILL No. 1358

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-41-1-4.7; IC 35-42-2-1; IC 35-45-2-1; IC 35-50-2-9.

Synopsis: Community policing volunteers. Defines "community policing volunteer" as a person who is actively participating in a plan, system, or strategy: (1) established by and conducted under the authority of a law enforcement agency; and (2) in which citizens work with members of the law enforcement agency to reduce or prevent crime within a defined geographic area. Increases the penalties for battery and intimidation if the victim is a community policing volunteer. Makes the fact that a murder victim was a community policing volunteer an aggravating circumstance when determining whether to impose a sentence of life imprisonment without parole or death on the person convicted of committing the murder. Makes a technical correction.

Effective: July 1, 2003.

Smith V, Klinker

January 14, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1358

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-41-1-4.7 IS ADDED TO THE INDIANA CODE
2 AS **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 4.7. "Community policing volunteer" means a person**
4 **who is:**

- 5 **(1) not a law enforcement officer; and**
6 **(2) actively participating in a plan, system, or strategy:**
7 **(A) established by and conducted under the authority of a**
8 **law enforcement agency; and**
9 **(B) in which citizens:**
10 **(i) participate with and are guided by the law**
11 **enforcement agency; and**
12 **(ii) work with members of the law enforcement agency to**
13 **reduce or prevent crime within a defined geographic**
14 **area.**

15 SECTION 2. IC 35-42-2-1, AS AMENDED BY P.L.222-2001,
16 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2003]: Sec. 1. (a) A person who knowingly or intentionally



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touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor. However, the offense is:

(1) a Class A misdemeanor if:

(A) it results in bodily injury to any other person;

(B) it is committed against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of his official duty;

(C) it is committed against an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty; ~~or~~

(D) it is committed against a firefighter (as defined in IC 9-18-34-1) while the firefighter is engaged in the execution of the firefighter's official duty; **or**

(E) it is committed against a community policing volunteer;

(2) a Class D felony if it results in bodily injury to:

(A) a law enforcement officer or a person summoned and directed by a law enforcement officer while the officer is engaged in the execution of his official duty;

(B) a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;

(C) a person of any age who is mentally or physically disabled and is committed by a person having the care of the mentally or physically disabled person, whether the care is assumed voluntarily or because of a legal obligation;

(D) the other person and the person who commits the battery was previously convicted of a battery in which the victim was the other person;

(E) an endangered adult (as defined by IC 35-46-1-1);

(F) an employee of the department of correction while the employee is engaged in the execution of the employee's official duty;

(G) an employee of a school corporation while the employee is engaged in the execution of the employee's official duty;

(H) a correctional professional while the correctional professional is engaged in the execution of the correctional professional's official duty;

(I) a person who is a health care provider (as defined in IC 16-18-2-163) while the health care provider is engaged in the execution of the health care provider's official duty;

(J) an employee of a penal facility or a juvenile detention

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facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty; ~~or~~ (K) a firefighter (as defined in IC 9-18-34-1) while the firefighter is engaged in the execution of the firefighter's official duty; **or**

(L) a community policing volunteer;

(3) a Class C felony if it results in serious bodily injury to any other person or if it is committed by means of a deadly weapon;

(4) a Class B felony if it results in serious bodily injury to a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age; and

(5) a Class A felony if it results in the death of a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age.

(b) For purposes of this section:

(1) "law enforcement officer" includes an alcoholic beverage enforcement officer; and

(2) "correctional professional" means a:

(A) probation officer;

(B) parole officer;

(C) community corrections worker; or

(D) home detention officer.

SECTION 3. IC 35-45-2-1, AS AMENDED BY P.L.241-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) A person who communicates a threat to another person, with the intent:

(1) that the other person engage in conduct against the other person's will;

(2) that the other person be placed in fear of retaliation for a prior lawful act; or

(3) of causing:

(A) a dwelling, a building, or another structure; or

(B) a vehicle;

to be evacuated;

commits intimidation, a Class A misdemeanor.

(b) However, the offense is a:

(1) Class D felony if:

(A) the threat is to commit a forcible felony;

(B) the person to whom the threat is communicated:

(i) is a law enforcement officer;

(ii) is a judge or bailiff of any court;

(iii) is a witness (or the spouse or child of a witness) in any

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pending criminal proceeding against the person making the threat; ~~or~~

(iv) is an employee of a school corporation; **or**

(v) is a community policing volunteer;

(C) the person has a prior unrelated conviction for an offense under this section concerning the same victim; or

(D) the threat is communicated using property, including electronic equipment or systems, of a school corporation or other governmental entity; and

(2) Class C felony if, while committing it, the person draws or uses a deadly weapon.

(c) "Threat" means an expression, by words or action, of an intention to:

(1) unlawfully injure the person threatened or another person, or damage property;

(2) unlawfully subject a person to physical confinement or restraint;

(3) commit a crime;

(4) unlawfully withhold official action, or cause such withholding;

(5) unlawfully withhold testimony or information with respect to another person's legal claim or defense, except for a reasonable claim for witness fees or expenses;

(6) expose the person threatened to hatred, contempt, disgrace, or ridicule;

(7) falsely harm the credit or business reputation of the person threatened; or

(8) cause the evacuation of a dwelling, a building, another structure, or a vehicle.

SECTION 4. IC 35-50-2-9, AS AMENDED BY P.L.117-2002, SECTION 2, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing

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the victim while committing or attempting to commit any of the following:

- (A) Arson (IC 35-43-1-1).
- (B) Burglary (IC 35-43-2-1).
- (C) Child molesting (IC 35-42-4-3).
- (D) Criminal deviate conduct (IC 35-42-4-2).
- (E) Kidnapping (IC 35-42-3-2).
- (F) Rape (IC 35-42-4-1).
- (G) Robbery (IC 35-42-5-1).
- (H) Carjacking (IC 35-42-5-2).
- (I) Criminal gang activity (IC 35-45-9-3).
- (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- (2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.
- (3) The defendant committed the murder by lying in wait.
- (4) The defendant who committed the murder was hired to kill.
- (5) The defendant committed the murder by hiring another person to kill.
- (6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, **community policing volunteer**, or law enforcement officer, and either:
 - (A) the victim was acting in the course of duty; or
 - (B) the murder was motivated by an act the victim performed while acting in the course of duty.
- (7) The defendant has been convicted of another murder.
- (8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.
- (9) The defendant was:
 - (A) under the custody of the department of correction;
 - (B) under the custody of a county sheriff;
 - (C) on probation after receiving a sentence for the commission of a felony; or
 - (D) on parole;
 at the time the murder was committed.
- (10) The defendant dismembered the victim.
- (11) The defendant burned, mutilated, or tortured the victim while the victim was alive.
- (12) The victim of the murder was less than twelve (12) years of age.

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(13) The victim was a victim of any of the following offenses for which the defendant was convicted:

- (A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.
- (B) Kidnapping (IC 35-42-3-2).
- (C) Criminal confinement (IC 35-42-3-3).
- (D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

- (A) into an inhabited dwelling; or
- (B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

- (1) The defendant has no significant history of prior criminal conduct.
- (2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.
- (3) The victim was a participant in or consented to the defendant's conduct.
- (4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.
- (5) The defendant acted under the substantial domination of another person.
- (6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.
- (7) The defendant was less than eighteen (18) years of age at the time the murder was committed.
- (8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all

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the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (k) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (k). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (k).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death

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1 sentence, the supreme court shall order a new date for the defendant's
2 execution.

3 (i) If a person sentenced to death by a court files a petition for
4 post-conviction relief, the court, not later than ninety (90) days after the
5 date the petition is filed, shall set a date to hold a hearing to consider
6 the petition. If a court does not, within the ninety (90) day period, set
7 the date to hold the hearing to consider the petition, the court's failure
8 to set the hearing date is not a basis for additional post-conviction
9 relief. The attorney general shall answer the petition for post-conviction
10 relief on behalf of the state. At the request of the attorney general, a
11 prosecuting attorney shall assist the attorney general. The court shall
12 enter written findings of fact and conclusions of law concerning the
13 petition not later than ninety (90) days after the date the hearing
14 concludes. However, if the court determines that the petition is without
15 merit, the court may dismiss the petition within ninety (90) days
16 without conducting a hearing under this subsection.

17 (j) A death sentence is subject to automatic review by the supreme
18 court. The review, which shall be heard under rules adopted by the
19 supreme court, shall be given priority over all other cases. The supreme
20 court's review must take into consideration all claims that the:

21 (1) conviction or sentence was in violation of the:

22 (A) Constitution of the State of Indiana; or

23 (B) Constitution of the United States;

24 (2) sentencing court was without jurisdiction to impose a
25 sentence; and

26 (3) sentence:

27 (A) exceeds the maximum sentence authorized by law; or

28 **(B) is otherwise erroneous.**

29 If the supreme court cannot complete its review by the date set by the
30 sentencing court for the defendant's execution under subsection (h), the
31 supreme court shall stay the execution of the death sentence and set a
32 new date to carry out the defendant's execution.

33 (k) Before a sentence may be imposed under this section, the jury,
34 in a proceeding under subsection (e), or the court, in a proceeding
35 under subsection (g), must find that:

36 (1) the state has proved beyond a reasonable doubt that at least
37 one (1) of the aggravating circumstances listed in subsection (b)
38 exists; and

39 (2) any mitigating circumstances that exist are outweighed by the
40 aggravating circumstance or circumstances.

41 **SECTION 5. [EFFECTIVE JULY 1, 2003] This act applies only**
42 **to crimes committed after June 30, 2003.**



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